

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ROCKWELL AUTOMATION  
TECHNOLOGIES, INC.,

*Plaintiff,*

v.

SECURE CROSSING RESEARCH  
AND DEVELOPMENT INC.,

*Defendant.*

Case No. 2:12-cv-10274-GCS-MKM

Honorable George Caram Steeh

**PLAINTIFF'S OPPOSITION TO MOTION TO QUASH**

On May 15, 2012, Defendant Secure Crossing Research and Development Inc. ("Secure Crossing") filed a motion to quash the deposition of Randall Reeves (the "Motion"). (Dkt. 25.) Secure Crossing's motion is moot as Plaintiff Rockwell Automation Technologies, Inc. ("Rockwell") has re-noticed the deposition of Mr. Reeves, and in any event, the Motion was brought without complying with Local Rule 7.1.

On May 11, 2012, the Court ordered the deposition of Mr. Reeves to take place during the week of May 28, 2012. (Case Management Order, Dkt. 22 at 7.) Counsel for Secure Crossing objected to the deposition date chosen. (See Motion.) Several times on Friday May 11, 2012, Paul Tanck, counsel for Rockwell, requested that Mr. Weintraub contact Scott Balber, also counsel for Rockwell, regarding the scheduling of the deposition.<sup>1</sup> After receiving a voicemail

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<sup>1</sup> Specifically, see the following correspondence attached to Exhibit A to the Motion: May 11, 2012 email sent at 5:23 p.m. from P. Tanck to A. Weintraub ("Please work with Scott Balber (212-208-5466) for any scheduling changes."), Exh. A at 4; May 11, 2012 e-mail sent at 5:36 p.m. from P. Tanck to A. Weintraub ("Hopefully we can work out a solution that accommodates all parties and reduces the need to involve the court. As you know, Scott Balber is taking the deposition on May 28th. If you would like to reschedule for a different date, I suggest you contact Scott so you can work out any scheduling conflicts."), Exh. A at 3-4; May 11, 2012 email sent at 2:50 p.m. (PST) ("I ask that you please contact Mr. Balber by telephone if you wish to reschedule the May 28 deposition. He can be reached at 212-408-5466.") Exh. A at 3; May 11, 2012 email sent at 3:07 p.m. (PST) ("Unfortunately, we seem to be talking past each other. Please call Mr. Balber on Monday in an effort to resolve any scheduling conflicts you have with the May 28 deposition date.") Exh. A at 2; May 11, 2012

from Mr. Weintraub on Tuesday, May 15, Mr. Balber memorialized his return phone call to Mr. Weintraub as follows:

This memorializes the bizarre events of the last ten minutes. At 2:21 pm EST, I received a voicemail message from you indicating that you were calling me as a courtesy to let me know that you would be filing a motion to quash the notice of deposition for Randy Reeves. At 2:24 pm I returned your call, asking why you would possibly consider making such a motion without meeting and conferring with me first. You indicated that you had already filed a motion and that you were "sick of the emails." I indicated that I was calling to discuss the scheduling of Mr. Reeves' deposition and, in the next breath, you asked me to send you an email. So, by this email, I am asking that you (1) withdraw your frivolous motion, and (2) let me know if Mr. Reeves is available to be deposed on May 31, in order for your client to be in compliance with the Judge's order. If so, we will send you an amended notice. Please let me know.

(May 15, 2012 e-mail sent at 2:34 p.m. from S. Balber to A. Weintraub, Declaration of P. Tanck In Support of Opposition to Motion to Quash, ("Tanck Decl."), Exhibit 1 at 3.)

Following this exchange, on May 15, 2012 Rockwell served by overnight mail an amended notice of deposition to setting the deposition of Mr. Reeves for May 31, 2012. (See Amended Notice of Deposition, Tanck Decl., Exh. 2.) Subsequently, Rockwell repeatedly requested that the Motion be withdrawn. (May 16, 2012 Letter from L. Schapira to A. Weintraub, Tanck Decl., Exh. 1 at 5; May 17 email sent at 5:06 p.m. from L. Schapira to A. Weintraub, Tanck Decl., Exh. 1 at 2; May 17, 2012 Letter from L. Schapira to A. Weintraub, Tanck Decl., Exh. 1 at 6.)

Counsel for Secure Crossing has not provided any assurance that it will withdraw its motion. (Tanck Decl. Exh. 1 at 2, May 18, 2012 email sent at 2:58 p.m. from L. Schapira to A. Weintraub.) Rockwell files this opposition so that its position is on record in the event that the Court decides to take action before this Motion is fully briefed.<sup>2</sup> Rockwell contends that this

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email sent at 6:26 p.m. ("I think the best course of action is that before you contact the court you should contact Mr. Balber on Monday to work out a solution."), Exh. A at 1.

<sup>2</sup> The Motion was termed as an "emergency" motion by Secure Crossing, but was not brought *ex parte*.

Motion is moot because the deposition of Mr. Reeves has been re-noticed. Rockwell also contends that the Court was involved prematurely and without the meet and confer envisioned by Rule 7.1. Mr. Tanck repeatedly requested that Mr. Balber be contacted regarding the scheduling of Mr. Reeves deposition. The telephone conversation that ensued did not involve a substantive discussion of the issues in Secure Crossing's Motion. Counsel for Secure Crossing may withdraw its Motion, but in any event, there is no conflict regarding the deposition of Mr. Reeves upon which the Court must rule.

Respectfully submitted,

Dated: May 18, 2012

/s/ Paul Tanck

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**ATTORNEYS FOR PLAINTIFF ROCKWELL  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th day of May, 2012 a copy of the foregoing was electronically filed with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

Dated: May 18, 2012

/s/ Paul Tanck

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